

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

DEC 03 2019

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

~~WESTERN DIVISION~~
CENTRAL

JAMES W. McCORMACK, CLERK

By: [Signature] **DEP. CLERK**

Case No.: **4:19-cv-858-KGB**

ROBERT AUSTIN, individually and on
behalf of other similarly situated.

Plaintiff,

v.

PUBLIC REPUTATION
MANAGEMENT SERVICES, LLC, d/b/a
PR.BUSINESS

Defendant.

**CLASS ACTION COMPLAINT
FOR DAMAGES, STATUTORY
DAMAGES, AND REQUEST FOR
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

This case assigned to District Judge Baker
and to Magistrate Judge Kearney

Preliminary Statement

1. Plaintiff Robert Austin ("Plaintiff") brings this action to enforce the consumer-privacy provisions of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, a federal statute enacted in 1991 in response to widespread public outrage about the proliferation of automated and prerecorded telephone calls, which, Congress found, were rightly regarded as in invasion of privacy. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

2. The Plaintiff alleges that Public Reputation Management Services, LLC d/b/a pr.business ("pr.business") made pre-recorded telemarketing calls to Plaintiff and other putative class members without their consent.

3. The Plaintiff and putative class members never consented to receive these calls. Because automated dialing campaigns generally place calls to hundreds of thousands or even millions of potential customers *en masse*, the Plaintiff brings this action on behalf of a proposed nationwide class of other persons who received illegal robocalls from or on behalf of the Defendant.

1 TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C.
2 § 227(b)(1)(A). *See* 47 U.S.C. § 227(b)(3).

3 11. According to findings by the Federal Communication Commission (“FCC”), the
4 agency Congress vested with authority to issue regulations implementing the TCPA, such calls
5 are prohibited because, as Congress found, automated or prerecorded telephone calls are a
6 greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly
7 and inconvenient.

9 12. The FCC also recognized that “wireless customers are charged for incoming calls
10 whether they pay in advance or after the minutes are used.” *In re Rules and Regulations*
11 *Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278, Report and Order,
12 18 F.C.C. Rcd. 14014, 14115 ¶ 165 (2003).

14 13. While “prior express consent” is required for all automated and prerecorded calls,
15 in 2013, the FCC required “prior express written consent” for all such telemarketing calls to
16 wireless numbers and residential lines. Specifically, it ordered that:

18 [A] consumer’s written consent to receive telemarketing robocalls must be signed
19 and be sufficient to show that the consumer: (1) received “clear and conspicuous
20 disclosure” of the consequences of providing the requested consent, i.e., that the
21 consumer will receive future calls that deliver prerecorded messages by or on
22 behalf of a specific seller; and (2) having received this information, agrees
unambiguously to receive such calls at a telephone number the consumer
designates.[] In addition, the written agreement must be obtained “without
requiring, directly or indirectly, that the agreement be executed as a condition of
purchasing any good or service.[]”

24 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,
25 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

1 14. “Telemarketing” is defined as “the initiation of a telephone call or message for
2 the purpose of encouraging the purchase or rental of, or investment in, property, goods, or
3 services, which is transmitted to any person.” 47 C.F.R. § 64.1200(f)(12).

4 15. When Congress enacted the TCPA in 1991, it found that telemarketers called
5 more than 18 million Americans every day. 105 Stat. 2394 at § 2(3).

6 16. By 2003, telemarketers were calling 104 million Americans every day, abetted by
7 the proliferation of new and more powerful autodialing technology. *In re Rules and Regulations*
8 *Implementing the TCPA of 1991*, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

9 17. Unfortunately, the problems Congress identified when it enacted the TCPA have
10 grown only worse in recent years.

11 18. “Robocalls and telemarketing calls are currently the number one source of
12 consumer complaints at the FCC.” Tom Wheeler, *Cutting Off Robocalls* (July 22, 2016),
13 <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls> (statement of FCC
14 chairman).

15 19. “The FTC receives more complaints about unwanted calls than all other
16 complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer
17 Protection, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of*
18 *1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016),
19 [https://www.ftc.gov/system/files/documents/advocacy_documents/commentstaff-ftc-bureau-](https://www.ftc.gov/system/files/documents/advocacy_documents/commentstaff-ftc-bureau-consumer-protection-federal-communications-commission-rulesregulations/160616robocallscomment.pdf)
20 [consumer-protection-federal-communications-commission-](https://www.ftc.gov/system/files/documents/advocacy_documents/commentstaff-ftc-bureau-consumer-protection-federal-communications-commission-rulesregulations/160616robocallscomment.pdf)
21 [rulesregulations/160616robocallscomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/commentstaff-ftc-bureau-consumer-protection-federal-communications-commission-rulesregulations/160616robocallscomment.pdf).

22 20. Even more recently, a technology provider combating robocalls warned that
23 nearly half of all calls to cell phones in 2019 will be fraudulent. *Press Release, First Orion*,
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1 *Nearly 50% of U.S. Mobile Traffic Will Be Scam Calls by 2019* (Sept. 12, 2018),
2 [https://www.prnewswire.com/news-releases/nearly-50-of-us-mobile-traffic-will-be-scam-calls-](https://www.prnewswire.com/news-releases/nearly-50-of-us-mobile-traffic-will-be-scam-calls-by-2019-300711028.html)
3 [by-2019-300711028.html](https://www.prnewswire.com/news-releases/nearly-50-of-us-mobile-traffic-will-be-scam-calls-by-2019-300711028.html)
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5 **Factual Allegations**

6 21. Pr.Business offers marketing services, with a focus on internet based presence.

7 22. In order to sell these services, Pr.Business relies on telemarketing.

8 23. One of the telemarketing strategies used by Defendant involves the use of
9 automated dialers and prerecorded messages to solicit potential customers to use Pr.Business's
10 services.
11

12 24. While such automated technology may save time and money for Pr.Business's
13 telemarketing efforts, it violates the privacy rights of the Plaintiff and putative class.
14

15 **Calls to The Plaintiff**

16 25. Plaintiff Austin is a "person" as defined by 47 U.S.C. § 153(39).

17 26. Mr. Austin's telephone number, (501) 960-XXXX, is registered to a cellular
18 telephone service.
19

20 27. Pr.Business called Mr. Austin on his cellular telephone with a pre-recorded
21 message on October 1, 2019, October 17, 2019 and October 25, 2019.

22 28. The purpose of the calls was to sell Pr.Business's services to Mr. Austin in
23 exchange for a fee.

24 29. Confirming that Pr.Business made the call and was offering their services, Mr.
25 Austin sent Pr.Business a letter.
26

27 30. Pr.Business confirmed that it made the calls.
28

1 31. The pre-recorded calls were made with an ATDS, as that term is defined by the
2 TCPA.

3 32. The equipment used to call Plaintiff and others not only had the capacity to store
4 or produce telephone numbers to be called using a random or sequential number generator, but
5 was programmed to sequentially or randomly access stored telephone numbers to automatically
6 call such numbers for the calls that are the subject of this case.

7 33. The equipment generated, and then stored, a sequence of telephone numbers for
8 calling, and then automatically called those numbers.

9 34. The calls were part of a campaign that made numerous phone calls in a short
10 period of time without human intervention.

11 35. The use of a pre-recorded message is further evidence of that.

12 36. In fact, it would be illogical to hand dial a telemarketing call only to use a pre-
13 recorded message.

14 37. Defendant's calls invaded Plaintiff's privacy and intruded upon his right to
15 seclusion. The calls frustrated and upset Plaintiff by interrupting their daily life and wasting their
16 time.

17 38. Defendant's calls intruded upon and occupied the capacity of Plaintiff' cellular
18 phone and depleted the battery of Plaintiff' cellular phone. The calls temporarily seized and
19 trespassed upon Plaintiff' use of their cellular phone, and caused them to divert attention away
20 from other activities to address the calls.

21 39. Plaintiff did not consent to receive Defendant's calls prior to the receipt of the
22 unsolicited conduct.

Class Action Allegations

40. As authorized by Rule 23(b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure, Plaintiff bring this action on behalf of a class of all other persons or entities similarly situated throughout the United States.

41. The Class of persons Plaintiff propose to represent is tentatively defined as:

All persons within the United States to whom: (a) Defendant and/or a third party acting on their behalf, made one or more non-emergency telephone calls; (b) to their cellular telephone number; (c) using the same, or similar dialing system used to contact the Plaintiff, or an artificial or prerecorded voice; and (d) at any time in the period that begins four years before the date of the filing of this Complaint to trial.

42. Excluded from the Class are counsel, the Defendant, and any entities in which the Defendant have a controlling interest, the Defendant's agents and employees, any judge to whom this action is assigned, and any member of such judge's staff and immediate family.

43. The Class as defined above is identifiable through phone records and phone number databases.

44. The potential Class members number at least in the thousands. Individual joinder of these persons is impracticable.

45. The Plaintiff is a member of the Class.

46. There are questions of law and fact common to Plaintiff and to the proposed Class, including but not limited to the following:

a. Whether Defendant violated the TCPA by using automated calls to contact putative class members cellular telephones;

b. Whether Defendant placed calls without obtaining the recipients' prior express invitation or permission for the call;

1 c. Whether the Plaintiff and the class members are entitled to statutory damages
2 because of Defendant's actions.

3 47. The Plaintiff's claims are typical of the claims of class members.

4 48. The Plaintiff is an adequate representative of the Class because his interests do
5 not conflict with the interests of the class, he will fairly and adequately protect the interests of the
6 class, and counsel skilled and experienced in class actions, including TCPA class actions,
7 represents them.

8 49. Common questions of law and fact predominate over questions affecting only
9 individual class members, and a class action is the superior method for fair and efficient
10 adjudication of the controversy. The only individual question concerns identification of class
11 members, which will be ascertainable from records maintained by Defendant and/or their agents.
12

13 50. The likelihood that individual members of the class will prosecute separate
14 actions is remote due to the time and expense necessary to prosecute an individual case.
15

16 51. The Plaintiff is not aware of any litigation concerning this controversy already
17 commenced by others who meet the criteria for class membership described above.
18

19 **Legal Claims**
20 **Violation of the TCPA's Automated Call provisions**

21 52. The Plaintiff incorporates the allegations from all previous paragraphs as if fully
22 set forth herein.

23 53. Defendant's calls were made without the prior express consent, or the prior
24 express written consent, of the called parties. 47 C.F.R. § 64.1200(a)(2); 47 C.F.R. §
25 64.1200(f)(8).
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1 Dated: December 3, 2019.

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